

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

**To:** Councillors Boyce (Chair), Crisp, Doughty, Gillies (Vice-Chair), Hyman, Jeffries, King, Looker, Merrett, Orrell, Riches, Semlyen, Richardson, Taylor and Wiseman

**Date:** Monday, 19 December 2011

**Time:** 5.00 pm

**Venue:**

**AGENDA**

**1. Declarations of Interest**

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

**2. Exclusion of Press and Public**

To consider excluding the public and press from the meeting during consideration of Annexes 3 to agenda items 5 and 6 on the grounds that they contain information relating to individuals. This information is classed as exempt under Paragraph 2 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

**3. Minutes**

(Pages 3 - 6)

To approve and sign the minutes of the meeting held on **21 November 2011**.

**4. 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 **5:00 pm on Friday 16<sup>th</sup> December 2011.**

- 5. Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 as amended by Policing and Crime Act 2009 - Grant of Sex Establishment Licence for Bohemia, 127 Micklegate, York, YO1 6LB. (Pages 7 - 70)**

- 6. Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 as amended by Policing and Crime Act 2009 - Grant of Sex Establishment Licence for Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ. (Pages 71 - 94)**

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

Democracy Officer:

Name: Laura Bootland

Contact Details:

- Telephone – (01904) 552062
- E-mail – [laura.bootland@york.gov.uk](mailto:laura.bootland@york.gov.uk)

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

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

## **About City of York Council Meetings**

### **Would you like to speak at this meeting?**

If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

**A leaflet on public participation is available on the Council's website or from Democratic Services by telephoning York (01904) 551088**

### **Further information about what's being discussed at this meeting**

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

### **Access Arrangements**

We will make every effort to make the meeting accessible to you. The meeting will usually be held in a wheelchair accessible venue with an induction hearing loop. We can provide the agenda or reports in large print, electronically (computer disk or by email), in Braille or on audio tape. Some formats will take longer than others so please give as much notice as possible (at least 48 hours for Braille or audio tape).

If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

Every effort will also be made to make information available in another language, either by providing translated information or an

interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

যদি যথেষ্ট আগে থেকে জানানো হয় তাহলে অন্য কোন অর্থাতে তথ্য জানানোর জন্য সব ধরণের চেষ্টা করা হবে, এর জন্য দরকার হলে তথ্য অনুবাদ করে দেয়া হবে অথবা একজন দোস্তমুহী সরবরাহ করা হবে। টেলিফোন নম্বর (01904) 551 550।

*Yeteri kadar önceden haber verilmesi koşuluyla, bilgilerin terümesini hazırlatmak ya da bir tercüman bulmak için mümkün olan herşey yapılacaktır. Tel: (01904) 551 550*

我們竭力使提供的資訊備有不同語言版本，在有充足時間提前通知的情況下會安排筆譯或口譯服務。電話 (01904) 551 550。

اگر مناسب وقت سے اطلاع دی جاتی ہے تو ہم معلومات کا ترجمہ میا کرنے کی پوری کوشش کریں گے۔ ٹیلی فون (01904) 551 550

*Informacja może być dostępna w tłumaczeniu, jeśli dostaniemy zapotrzebowanie z wystarczającym wyprzedzeniem. Tel: (01904) 551 550*

### **Holding the Executive to Account**

The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

### **Scrutiny Committees**

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

### **Who Gets Agenda and Reports for our Meetings?**

- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to;
- Public libraries get copies of **all** public agenda/reports.

City of York Council

Committee Minutes

---

MEETING	GAMBLING, LICENSING & REGULATORY COMMITTEE
DATE	21 NOVEMBER 2011
PRESENT	COUNCILLORS BOYCE (CHAIR), CRISP, DOUGHTY, HYMAN, JEFFRIES, KING, LOOKER, MERRETT, ORRELL, SEMLYEN, RICHARDSON, TAYLOR AND WISEMAN
APOLOGIES	COUNCILLORS GILLIES AND RICHES

---

**11. DECLARATIONS OF INTEREST**

At this point in the meeting, Members are asked to declare any personal or prejudicial interests they may have in the business on the agenda.

Councillor Taylor declared a personal and prejudicial interest in relation to agenda item 4 as he works for an establishment that is licensed for regulated entertainment. He left the room when this item was considered and took no part in the discussions.

Councillor Hyman declared a personal interest as he had received an email from Allan Davies, the Chair of the Independent Taxi Association in relation to agenda item 5, although he had not entered into discussions with Mr. Davies.

**12. MINUTES**

RESOLVED: That the minutes of the meeting held on 5 October 2011 be approved and signed by the Chair as a correct record.

**13. PUBLIC PARTICIPATION**

It was reported that there had been no registrations to speak under the Council's Public Participation Scheme.

**14. REGULATED ENTERTAINMENT - A PROPOSAL TO DEREGULATE.**

Members considered a report which advised them of a recent consultation from the Department of Culture, Media and Sport

(DCMS) entitled 'Regulated Entertainment' to examine the deregulation of Schedule One of the Licensing Act 2003.

Officers outlined the report and advised that the DCMS is proposing to deregulate certain licensable regulated entertainment activities.

Members made the following comments and suggestions:

- The consultation response drafted by Officers is reflective of what happens in York.
- At present there is a good balance in the City between licensed premises and the needs of residents and de-regulation would not be helpful.
- A summary or headline statement at the beginning of the response would be useful to highlight that City of York Council does not agree with the proposed de-regulation.
- In relation to the response to question 16, some Members felt that 22:00 was a suitable cut off time for live music in some instances, especially if children resided in neighbouring residential buildings.

**RESOLVED:** That Members approved the draft response attached at Annex 3 and delegated to the Chair and Vice Chair to agree final wording with Officers before submitting the response to the DCMS.

**REASON:** To ensure the Council's views on the matter are communicated to the DCMS.

**15. REVISED TAXI LICENSING POLICY.**

Members considered a report which asked them to approve a revised Taxi Licensing policy.

Officers advised that the 2011 Halcrow Unmet demand Survey had been received and it had identified no evidence of significant unmet demand for Hackney Carriages in York.

A suggested policy was set out at Annex B to the Officers report which incorporated the decisions made by Members at the

meeting on the 13 July 2011 at which they had considered the recommendations from the Scrutiny Review of Taxi Licensing Policy. The policy also reflects the findings of the Halcrow Unmet Demand Survey.

The following discussions took place:

- In response to Members questions, Officers confirmed they had taken legal advice on the suggested policy at Annex B and that Legal Officers were satisfied with the policy.
- Members acknowledged that the trade did not want further licence plates to be issued but felt that the Council has an obligation to encourage the provision of wheelchair accessible vehicles and environmentally friendly vehicles for use as Hackney Carriages.
- In relation to paragraph 7 of the proposed policy at Annex B, Members queried how soon the requirement for new taxi drivers to take an eco-driving course could be enforced. Officers advised that as soon as they had identified a suitable course, this would be enforced.
- Officers advised that they were satisfied that Euro 5 diesel vehicle class was suitable for replacement vehicles along with petrol vehicles.

RESOLVED: That Members approved Option 1 and adopted the Taxi Licensing policy as set out at Annex B.

REASON: The policy incorporates the recommendations of the Community Safety Overview and Scrutiny Committee and the findings of the Halcrow Unmet Demand Survey.

This page is intentionally left blank

 <p>CITY OF <b>YORK</b> COUNCIL</p>	
<p><b>Meeting of Gambling, Licensing &amp; Regulatory Committee</b></p>	<p>19 December 2011</p>
<p>Report of the Assistant Director – Communities &amp; Neighbourhoods</p>	

**Local Government (Miscellaneous Provisions) Act 1982  
Schedule 3 as amended by Policing and Crime Act 2009  
Grant of Sex Establishment Licence for  
Bohemia, 127 Micklegate, York, YO1 6LB**

**Summary**

1. This report seeks Members determination of an application for the grant of a Sex Establishment Licence for a Sexual Entertainment Venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Bohemia, 127 Micklegate, York, YO1 6LB.
2. Name of applicant: Mr Hong Son Poc
3. Summary of Application: A copy of the application is attached at Annex 1 and is summarised as follows: Hours of Opening Monday to Sunday 21:00 hrs to 04:30 hrs and 17:00 hrs to 04:30 hrs on York Race Days and one day preceding each Race Meeting.
4. Bohemia currently operates with a premises licence issued under the Licensing Act 2003 which allows the following licensable activities:

Live music	Monday – Sunday 10:00 hrs – 03:30 hrs
Recorded music	As above
Performance of dance	As above
Activities like music/dance	As above
Late night refreshment	Monday – Sunday 23:00 hrs – 03:30 hrs
Supply of alcohol	Monday – Sunday

	10:00 hrs – 03:30 hrs
Opening hours	Monday – Sunday 10:00 hrs – 04:00 hrs

A copy of the premises licence is attached at Annex 2.

5. Previously on York race days Bohemia operated between 17:00 hours and 04:30 hours under a Temporary Events Notice applied for under the Licensing Act 2003. This allowed the premises to open outside the normal operating hours.
6. In 2010 the premises operated under 4 Temporary Event Notices covering a period of 14 days. In 2011 the premises operated under 6 Temporary Event Notices covering a period of 15 days.

## **Background**

7. On 6 April 2010, section 27 of the Policing and Crime Act 2009 became operative. This legislation reclassified lap dancing clubs and other similar venues as 'sexual entertainment venues'; a sex establishment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This allowed Local Authorities who adopted the provisions of the legislation to regulate lap dancing clubs and similar venues under the same regime as sex shops. An extract from the legislation is attached at Annex 6 and summarised at Annex 7.
8. Previously lap dancing premises were regulated under the Licensing Act 2003 (the '2003 Act') and required a Premises Licence under Section 1 of the 2003 Act. There were no special provisions made within the 2003 Act for lap dancing clubs and applications for licences were submitted in the same way as a pub or restaurant. The only mandatory conditions that apply to a premises licence relate to the sale of alcohol, the use of door staff and the showing of films. It is only when relevant representations are received by an interested party that the Authority can, following a hearing, impose other conditions or reject the application if deemed necessary to promote one of the four licensing objectives. Therefore, the powers available to Local Authorities to

control the establishment of lap dancing premises were limited.

9. Sexual entertainment venues are defined as 'any premises at which relevant entertainment is provided for a live audience for the financial gain of the organiser or performer'. The meaning of relevant entertainment is 'any live performance or live display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)'
10. This Authority adopted the provisions of the legislation on 7 October 2010 when the resolution was approved by full council. A copy of City of York Council's Policy for the Determination of Applications for Sexual Entertainment Venues is attached at Annex 8.
11. With the new legislation there are no 'grandfather rights' for existing clubs. If they wish to continue trading they need to apply for a Licence under the new regime. A transitional period of 12 months was given to existing clubs to apply for a new Licence. Premises, which failed to apply for a new licence within this period, faced closure.
12. York currently has three established licensed sex shops and two premises that require licensing as sexual entertainment venues both in Micklegate, one of which is Bohemia. This premise has operated without problems since opening. A map of the area showing Bohemia in relation to the other sexual entertainment venue is attached at Annex 9.
13. Standard conditions for the licensed sex shops were amended to include sexual entertainment venues and were approved by full Council. The lack of problems from existing licensed premises would indicate that these conditions provide sufficient safeguards. A copy of the conditions is attached at Annex 10.

## **Consultation**

14. Consultation was carried out by the applicant and the Licensing Authority in accordance with paragraph 10 of Schedule 3 of the 1982 Act relating to the process which the applicant must follow for the application to be considered valid. In addition all Ward Councillors were informed by way of register.
15. As a result of the consultation two objections were received from residents in the Micklegate area. Copies of the objections are attached at Annex 3 (confidential) and Annex 4.
16. Schedule 3, paragraph 10(17) of the 1982 Act (as amended) states "The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant." No such consent has been received. Full copies of the objections have been provided to the Committee, and redacted copies to the applicant.
17. After consultation with North Yorkshire Police, the applicant agreed to reduce the hours applied for to reflect the hours of operation authorised by the existing premises licence. Therefore amending the hours applied for to; standard operating hours 21:00 hrs until 04:00 hrs daily with non-standard timings on York Racecourse Race Days only as 17:00 hrs to 04:30 hrs. A copy of the agreement by way of email is attached at Annex 5.

## **Other Relevant Information**

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

## **Options**

19. 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:

20. Option 1: Grant the licence in the terms applied for.
21. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
22. Option 3: Reject the application.

### **Analysis**

23. The following could be the result of any decision made by this Committee:
24. Option 1: This decision could be appealed at Magistrates Court by an objector to the application.
25. Option 2: This decision could be appealed at Magistrates Court by the licence applicant or by an objector to the application.
26. Option 3: This decision could be appealed at Magistrates Court by the licence applicant.

### **Council Plan**

27. The approved City of York Council Standard Conditions Applicable to Licences issued to Sex Establishments will support the Council's priority to protect vulnerable people and create jobs and grow the economy.

### **Implications**

28.
  - **Financial** - N/A
  - **Human Resources (HR)** – N/A
  - **Equalities** – N/A
  - **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the objectors.

- **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**

29. All Members are aware that any decision which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
30. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

### **Recommendations**

31. Members grant the application with the operating hours agreed with North Yorkshire Police as detailed in paragraph 17.

Reason: This premise has operated as lap dancing venue under the provisions of the Licensing Act 2003 since May 2007 without incident.

**Contact Details**

<b>Author:</b>	<b>Chief Officer Responsible for the report:</b>		
Lesley Cooke Licensing Manager Ext 1515	Steve Waddington Assistant Director Housing & Public Protection Ext 4016		
	<b>Report Approved</b>	√	<b>Date</b> 7/12/11

<b>Wards Affected:</b> Micklegate
-----------------------------------

**Annexes**

- Annex 1** - Copy of application
- Annex 2** - Copy of premises licence issued under the Licensing Act 2003
- Annex 3** - Copy of Objectors Letters (confidential)
- Annex 4** - Copy of Objectors Letters
- Annex 5** - Copy of agreement between applicant and North Yorkshire Police

**Background Papers**

- Annex 6** - Extract from Schedule 3
- Annex 7** - Summary of Schedule 3
- Annex 8** - Copy of CYC Policy for the Determination of Applications for Sexual Entertainment Venues
- Annex 9** - Map showing location of premises
- Annex 10** - Copy of Standard Conditions Applicable to Licences issued to Sex Establishments
- Annex 11** - Legislation and Policy Considerations

This page is intentionally left blank

Amesc 1.

RECEIVED

1992 3/11



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

**SCHEDULE 3 - CONTROL OF SEX ESTABLISHMENTS**

**Application for the Grant / Renewal / Transfer of a Sex Establishment Licence  
Sexual Entertainment Venues**

Please complete this application form in ink and block capitals.

Type of application 

Grant	<input checked="" type="checkbox"/>	Renewal	<input type="checkbox"/>	Transfer	<input type="checkbox"/>
-------	-------------------------------------	---------	--------------------------	----------	--------------------------

1. If application is made on behalf of an individual please state:

Full Name	HONG SON POC				
Permanent address	FLAT 4, 29 WALMGATE, YORK, YO1 9TX				
Age	32	Date of birth	31/07/79	Place of birth	HONG KONG

2. Give full names and private addresses of all directors or other persons responsible for management of the establishment:

Name					
Address					
Age		Date of birth		Place of birth	

Name					
Address					
Age		Date of birth		Place of birth	

Name					
Address					
Age		Date of birth		Place of birth	

Name					
Address					
Age		Date of birth		Place of birth	

3. Have you any convictions recorded against you? Or if a body corporate or unincorporated body that body or any of its directors or other persons responsible for its management? If so please state:

Date of Conviction	Offence	Sentence (including suspended sentence)

- (a) All convictions must be disclosed  
 (b) Spent convictions, as defined below, should not be included

Sentence	Becomes spent after
Imprisonment of between 6 months and 30 months	10 years
Imprisonment of up to 6 months	7 years
Borstal training	7 years
A fine or other sentence not otherwise covered in this table	5 years
Absolute discharge	6 months
Probation order, conditional discharge or bind over	1 year (or until order expires, whichever is longer)
Detention Centre Order	3 years
Remand home, attendance centre or approved school order	The period of the order and a further year after the order expires
Hospital order under the Mental Health Act	The period of the order and a further 2 years after it expires
Cashiering, discharge with ignominy or dismissal with disgrace from the Armed Forces	10 years
Dismissal from Armed Forces	7 years
Detention	5 years

Note

- (i) A sentence of more than 2½ years imprisonment can never become spent.  
 (ii) If you were under 17 years of age on the date of conviction, please halve the period shown in the right-hand column.

4. Have you been resident in the United Kingdom throughout a period of six months immediately preceding the date of this application?

YES / NO

5. If the application is made on behalf of a body corporate is that body incorporated in the United Kingdom?

YES / NO

6. Full name and address of premise desired to be used as a sex establishment:

Name	BOHEMIA
Address	127 MICKLEGATE, YORK, YO1 6LS

If this application relates to a vehicle/vessel/stall give description and state where it is to be used as a sex establishment:


7. On which days and hours do you wish to trade:

Monday	21.00.0430	Tuesday	21.00.0430	Wednesday	21.00.0430	Thursday	21.00.0430
Friday	21.00.0430	Saturday	21.00.0430	Sunday	21.00.0430		

8. Are the premises licensed under the Licensing Act 2003?

YES / NO

9. Are you (or, if a corporate or unincorporated body, that body) disqualified from holding a licence for a sex establishment?

YES / NO

10. Have you ever been refused a licence for a sex establishment?

YES / NO

If yes please give details

--

11. In the case of a transfer:

Name of Existing Licensee \_\_\_\_\_ being the existing licensee of the within named premises hereby consent to the transfer of licence to \_\_\_\_\_

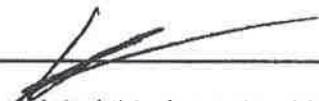
Signature  Date 11/10/11

I declare that I have checked the information given on this application form and to the best of my knowledge and belief it is correct, and that:

- (a) The fee is enclosed.
- (b) A copy of the application has been served on North Yorkshire Police, Headquarters, Fulford Road, York, YO10 4BY.
- (c) A notice publicising this application will be displayed for 21 days beginning with the date of the application on or near the premises and in a place where it can conveniently be read by the public.
- (d) Notice of the application will be given by publishing an advertisement in a local newspaper circulating in the local area. The publication of the notice shall not be later than seven days after the date of application.

Please provide contact details for correspondence associated with this application:

Name	HONG POC
Address	127 MICKLEGATE
	YORK, YO1 6LB
Contact Number / Email	07984000888 BOHEMIACLUBMFC.COM

Signed  Date 11/10/11

when completed this form should be returned to:  
 Licensing Services  
 City of York Council  
 9 St Leonard's Place  
 York  
 YO1 7ET

Cockerill, Janice

---

**From:** Simon Soumalit [mailto:simon@perfectaperture.co.uk]  
**Sent:** 14 October 2011 11:28  
**To:** CAN Licensing Unit  
**Subject:** Bohemia SEL

FTAO

Janice Cockerill  
Licensing Services  
City of York Council  
9 St Leonard's Place  
YO1 7ET

With reference to the application for a Sex Establishment Licence for the premises known as:

Bohemia  
127 Micklegate  
York  
YO1 6LB

I would like to apply for the following hours in addition to those previously mentioned.

1700 opening to 0430 closing.

I would like these hours to be available on the days of Race Meetings at York and one day preceding each Race Meeting.

Regards.  
Hong Son Poc



## LICENSING ACT 2003

### PREMISES LICENCE

#### Schedule 12

#### Part A

#### Part 1 Premises details

Premises licence number CYC - 009095
---

Postal address of premises:

**Bohemia  
127 Micklegate**

Post town: York

Post code: **YO1 6LB**

Telephone number: None

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

#### Licensable activities authorised by the licence:

Live Music  
Recorded Music  
Performances of Dance  
Activities like music/dance  
Facility for making music  
Facilities for dancing  
Facility like music/dance  
Late Night Refreshment  
Supply of Alcohol

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

**LIVE MUSIC**

Indoors

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30	

**RECORDED MUSIC**

Indoors

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30	

**PERFORMANCES OF DANCE**

Indoors

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30	

**ACTIVITIES LIKE MUSIC/DANCE**

Indoors

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30	

FACILITY FOR MAKING MUSIC

Indoors

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30	

FACILITIES FOR DANCING

Indoors

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30	

FACILITY LIKE MUSIC/DANCE

Indoors

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30	

LATE NIGHT REFRESHMENT

Indoors

Monday 23:00 - 03:30	Tuesday 23:00 - 03:30	Wednesday 23:00 - 03:30	Thursday 23:00 - 03:30
Friday 23:00 - 03:30	Saturday 23:00 - 03:30	Sunday 23:00 - 03:30	

SUPPLY OF ALCOHOL

Monday 10:00 - 03:30	Tuesday 10:00 - 03:30	Wednesday 10:00 - 03:30	Thursday 10:00 - 03:30
-------------------------	--------------------------	----------------------------	---------------------------

Friday 10:00 - 03:30	Saturday 10:00 - 03:30	Sunday 10:00 - 03:30
-------------------------	---------------------------	-------------------------

Non Standard Timings for Live Music, Recorded Music, Performances of Dance, Activities like Music/Dance, Facility for Making Music, Facilities for Dancing, Facility like Music/Dance, Late Night Refreshment and Supply of Alcohol:

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

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

**The Opening Hours of the Premises**

Monday 10:00 - 04:00	Tuesday 10:00 - 04:00	Wednesday 10:00 - 04:00	Thursday 10:00 - 04:00
-------------------------	--------------------------	----------------------------	---------------------------

Friday 10:00 - 04:00	Saturday 10:00 - 04:00	Sunday 10:00 - 04:00
-------------------------	---------------------------	-------------------------

Non Standard Timings:

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

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

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

On and off the premises

**Part 2**

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

Name: Mr Hon Son Poc

Address: Flat 4  
29 Walmgate  
York  
YO1 9TX

Telephone number: None

Email address: None

**Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol:**

Name: Mr Hon Son Poc

**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:**

City of York Council  
CYC-011016

## **Annex 1 – Mandatory conditions**

### MANDATORY CONDITIONS WHERE LICENCE AUTHORISES 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 shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
4. – (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 in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children-
  - (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 (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
  - (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;
  - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on-
    - (i) the outcome of a race, competition or other event or process, or
    - (ii) the likelihood of anything occurring or not occurring;
  - (e) 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.

5. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

6. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

7. – (1) The premise licence holder or club premise certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

7. – (2) 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 a holographic mark.

8. The responsible person shall 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: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

## MANDATORY CONDITION: DOOR SUPERVISION

(1) In accordance with section 21 of the Licensing Act 2003, 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 be licensed by the Security Industry Authority.

(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

(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.

### **Embedded Restrictions**

#### Recorded Music

Recorded music may be played throughout the premises without limitation in line with previous provisions as set out in Section 182 of the Licensing Act 1964.

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

#### **Licensing Objectives**

## General

1. Entertainment of an adult nature and performances of lap dancing are permitted in accordance with the conditions attached at Annex 3

## Prevention of Crime & Disorder

2. Staff will be trained to the standards required by relevant legislation.

3. A personal licence holder will be on the premise at all times the sale of alcohol is taking place.

4. Receptacles for the disposal of glass and other sharp objects will be provided on the premise.

5. Criminal conduct will be discouraged, in particular the use of illegal substances by displaying notices in and at the entrances to the premise. Notices will state "Entry will be refused to any person who is drunk, threatening or violent. Entry may be refused to any person who has been convicted of an offence of drunkenness, violent or threatening behaviour or the use of or distribution of illegal substances at a licensed venue. Evidence may be recorded on imaging equipment for CCTV and offences will be reported to the police."

6. Offences outside the premise will be discouraged, if an offence takes places the police will be informed at the earliest opportunity.

7. The licence holder will operate a Licensees Association (Pubwatch) or other licensees representative body.

8. An incident log will be kept of full details of the circumstances surrounding any seizure of drugs or articles taken as a consequence of a criminal offence or other incidents. Any retained items which may be required as evidence will be brought to the attention of the police.

9. Suitable receptacles will be provided in accordance with the police guidance for the safe retention of illegal substances and inform the police to arrange appropriate disposal.

10. An appropriate proof of age scheme will be in operation in accordance with guidance issued by North Yorkshire Police.

#### Public Safety

11. The total occupancy of the premises should not exceed 350 persons.

12. Members of staff have first aid training and treatment is available on the premise.

13. The premise will be managed by a sufficient number of staff at all times.

#### Public Nuisance

14. Door supervisors will take reasonable steps to prevent the removal of glasses and bottles taken away from the premise.

15. Queues will be monitored by door supervisors and any person who is causing a nuisance or who appears intoxicated will not be allowed into the premise and will be asked to leave the queue.

#### Protection of Children from Harm

16. No person under the age of 18 will be admitted to the premise.

#### For Regulated Entertainment consisting of Recorded Music:

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

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

c) Bottle bins will not be emptied after 23:00 hours.

d) The inner main entrance doors will be closed at 22:00 hours and only used for ingress and egress.

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

1. A dispersal policy and procedure shall be agreed in writing with the local Licensing Authority.
2. No off sales to take place after 02:30 hours on each and every day.
3. There will be no admissions allowed after 03:00 hours.

Additional Conditions for Lap Dancing and Adult Entertainment

4. The premise will be conducted in a decent, sober and orderly manner at all times. Steps will be taken to ensure that none of the following takes place:
  - a. indecent behaviour including sexual intercourse;
  - b. the offer of any sexual or other indecent service for reward;
  - c. unlawful possession and/or supply of drugs controlled by the Misuse of Drugs Act 1971;
  - d. any acts of violence against persons or property and/or the attempt or threat of such act likely to cause a breach of the peace.
5. No one under the age of 18 shall be permitted to enter the premises (or remain on the premises) whilst entertainment of an adult nature is being provided.
6. All performers shall be over 18 years of age.
7. Notices to be displayed within the premises and at the entrance informing customers of the "House Rules" that affect them and a warning that "adult entertainment" is provided within the premises.

8. Written information shall be given to the dancers/entertainers advising them of the house rules for performers and customers and possible consequences of failure to comply.

9. Adult entertainment shall not take place in a location that could be viewed from outside the premises.

10. Advertising of adult entertainment either on the premises or otherwise shall not include any photographs or images which indicate that entertainment involving nudity or sexual performance takes place on the premises.

11. CCTV for both monitoring and recording shall be installed, maintained and operated in accordance with Data Protection guidelines and will cover all areas where dancing takes place. All cameras shall continually record whilst the premises are open to the public and recordings shall be kept for a period of 28 days with times and dates indicated. These recordings shall be kept secure and shall be made available to an authorised officer of the Local Authority or a Police Officer on request.

12. Performers shall be provided with separate dressing/changing rooms which shall be located so as to be separate and set apart from the public facilities. No person other than performers and authorised staff will be allowed in or near the dressing/changing room. Safe and controlled access to the dressing/changing room will be maintained at all times.

13. There shall be at least one female member of staff authorised to be responsible for the safety and welfare of the performers.

14. Door Supervisors shall be positioned at all entrances to the premises throughout the performance and shall be present in the room/area in which the performance takes place.

15. Dance entertainment shall be given only by performers/entertainers who are engaged exclusively for that purpose. Audience participation shall not be permitted.

16. Dance entertainment shall only be performed in the areas of the club as marked on the plans deposited with the Licensing Authority and with the Authority's approval. These areas can only be changed with the approval of the Licensing Authority.

17. If performers are invited to have a drink with a customer, the performer will remain fully clothed during this period. Performers will not be paid commission on the sale of beverages.

18. On leaving the premise performers will be escorted to their transport by a door supervisor.

19. Adult entertainment shall not take place before 21:00 hours.

20. Adult entertainment shall not take place on a Sunday as the premise is located near several places of religious worship.

21. The premises licence holder shall ensure that the house rules for both customers and performers are strictly adhered to.

#### House Rules (Customers)

1. Dancers may only dance to seated customers.

2. Customers must remain clothed at all times.

3. Dancers must not be touched by the customer while they are dancing except for the placing of gratuities into the hand or garter of the dancer at the beginning or conclusion of the performance.

4. No person shall take any video recordings or photographs by any means of the authorised adult entertainment.

5. No persons other than performers and authorised staff shall be permitted in the dressing/changing rooms.

6. Dancers shall re-dress at the conclusion of the performance.

7. Customers who fail to comply with these rules shall be removed from the premise by the management or security staff

8. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.

9. The duty manager and security staff will ensure that all customers and performers adhere to the house rules.

#### House Rules (Performers)

1. All performers shall be over 18 years of age. Prior to engagement all performers will provide documentation that they are aged 18 years or over. Checks will be made to make sure the necessary legal work permits to work in the United Kingdom are in place. Should performers be employed from an agencies the same checks will be carried out. Management shall keep written record of these checks which shall be available to authorised officers of the council and the Police.

2. No performer shall be allowed to work, if under the judgement of the management, they appear to be intoxicated or under the influence of illegal substances.

3. No performance shall involve the use of sex articles (as defined in the Local Government (Miscellaneous Provisions) Act 1982).

4. Performers shall not use any props or clothing in the act which portrays them as a minor.

5. Garters worn for the collection of gratuities shall be situated no higher than mid-thigh.

6. Dancers shall re-dress at the conclusion of the performance and are to remain clothed (minimum bikini top and bottoms) at all times except when giving a performance.

7. Performances of adult nature must be restricted to the designated areas.

8. All staff and performers are forbidden to give personal details including real name and address or other contact details of any

other performer or staff member to a customer. Performers are strongly advised not to pass their own personal details to customers.

9. The duty manager and security staff will ensure that all customers and performers comply with the house rules.

For and on behalf of  
The Director of Communities  
& Neighbourhoods

Date: 07/09/2005  
11/06/2007 (Variation)

Licensing Services  
9 St Leonard's Place  
York  
Y01 7ET

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)

Document is Restricted

This page is intentionally left blank

Annex 4

ack  
14/11/11  
[Redacted]

[Redacted]

9 November 2011

P.124816

Licensing Office  
9 St Leonard's Place  
York YO1 7ET

**CYC/MAU 19123 Application for Grant of Establishment Licence for Sexual Entertainment Venue: Bohemia 127 Micklegate York**

As a local resident I would wish to object to this application on the grounds of public nuisance to the many residents of the Micklegate and Bishophill areas..

This establishment will undoubtedly attract rowdy groups of men such as stag parties and racegoers who are bound to disturb local people and visitors - especially if the premises are open until 4.30am.

In addition I would argue that having two such establishments in such a small area exceeds the number that the Authority should consider as being appropriate for this residential area and the application should be regarded as failing to comply with the terms of the Authority's Policy for the Determination of Applications for Sexual Entertainment Venues.

I would particularly object to the proposal that the opening hours should be brought forward to 5.00pm on "Race Days and the day preceding each race meeting". If granted this would apply to approximately 25 days next year and result in antisocial behaviour and additional noise nuisance for local residents.

In summary I would hope that the application will be rejected, or at the very least, the Authority's Policy that adult entertainment should not take place before 9.00pm should be applied.

Yours sincerely,

[Redacted signature block]

P 124815

ORIGINAL ACC DATED 14/11/11 11/11/2011 RECEIVED
--

10th November 11

Re: CYC/MAJ 19123 application for grant of  
 Establishment licence for Sexual Entertainment  
 Venue : Bahamra, 127, Mucktaga, York.

Dear Sir / Madam,

I would like to object to this application  
 as I believe a lap dancing club will result  
 in noise and public nuisance in and around  
 Mucktaga.

I object to the opening hours being  
 brought forward on Race Days as large numbers  
 of Secondary School children and students  
 walk along Mucktaga on their way home.  
 Mucktaga has a surprisingly large residential  
 population and any extension of opening hours  
 is bound to cause concern.

I hope the council will reject this  
 application on the grounds of noise and  
 nuisance to residents and tourists alike.

Yours sincerely,

[Redacted signature]

[Redacted address]

**Cockerill, Janice**

---

**From:** Wilkinson, Mick [Mick.Wilkinson@northyorkshire.pnn.police.uk] on behalf of York Licensing [YorkLicensing@northyorkshire.pnn.police.uk]  
**Sent:** 11 November 2011 12:09  
**To:** CAN Licensing Unit  
**Subject:** New Grant (Sex Establishment Licence) - Bohemia, Micklegate, York

We have received an application from Hong Son Poc for the grant of a Sex Establishment Licence at the above venue.

The Police would like to comment that we would seek to have the opening hours of the venue in line with those of the current Premises Licence save for the below listed agreement on days when York Race are held i.e:-

"Standard Operating Times" for the Sex Establishment Licence shall be 2100hrs until 0400hrs so that the "standard" terminal hour is the same as the terminal hour as the Premises Licence.

"Non Standard Operating Times" for the Sex Establishment Licence shall be 1700hrs until 0430hrs on York Racecourse Race Days only.

Should you have any further queries about this, or any other licensing matter, then please don't hesitate to get in touch.

Regards,

*Mick Wilkinson*  
PC952

*Police Licensing Unit (York, Selby, Hambleton & Richmondshire)*  
*Community Safety Dept*  
*Landline - 01904 669945*  
*Mobile - 07802 385220*

*E Mail: mick.wilkinson@northyorkshire.pnn.police.uk*

[<<<<mailto:mick.wilkinson@northyorkshire.pnn.police.uk>>>>](mailto:mick.wilkinson@northyorkshire.pnn.police.uk)

---

**From:** Sam [mailto:bohemiaclub@me.com]

**Sent:** 01 November 2011 11:52

**To:** Wilkinson, Mick

**Subject:** Re: Sex Establishment Licence - Bohemia, Micklegate, York

Dear Mr Wilkinson

for some strange reason this didn't leave my email.

As agreed through our conversation regarding the timings.

i am happy with the statement of clarity .

Kind regards

Hong Poc

On 19 Oct 2011, at 11:26, Wilkinson, Mick wrote:

Poc,

Firstly, may I take this opportunity to thank you for taking the time to discuss this application earlier today. The purpose of this email is to document the agreement that we came to which I have listed below. As you are aware your venue sits in the City of York Council's Cumulative Impact Zone and as such we need to give careful consideration to the application and, as a result, the Police would have concerns if you chose to operate until 0430hrs on a regular basis due to your location in the CIZ but you have agreed to alter you application.

For the purpose of clarity our agreement is listed as follows:-

- "Standard Operating Times" for the Sex Establishment Licence shall be 2100hrs until 0400hrs so that your "standard" terminal hour is the same as the terminal hour on your Premises Licence.
- "Non Standard Operating Times" for the Sex Establishment Licence shall be 1700hrs until 0430hrs on York Racecourse Race Days only.

It would be remiss of me if I didn't take this opportunity to point out to you that you will need to apply for Temporary Event Notices on York Racecourse Race Days so that you operate legally between 0400hrs and 0430hrs should you wish to undertake any Licensable Activities. I would expect that if you did submit relevant TEN's that the agreement that we have had in place in recent years covering similar notifications will still be implemented.

Should you still be in agreement with the above proposal then please email me back and I will ensure that the Licensing Department, City of York Council are made aware so they can consider altering your application accordingly. I look forward to hearing from you.

Should you have any further queries about this, or any other licensing matter, then please don't hesitate to get in touch.

Regards,

*Mick Wilkinson*

*PC952*

*Police Licensing Unit (York, Selby, Hambleton & Richmondshire)*

*Community Safety Dept*

*Landline - 01904 669945*

*Mobile - 07802 385220*

*E Mail: [mick.wilkinson@northyorkshire.pnn.police.uk](mailto:mick.wilkinson@northyorkshire.pnn.police.uk)*

*<<<<mailto:mick.wilkinson@northyorkshire.pnn.police.uk>>>>*

\*\*\*\*\*

Internet email is not to be treated as a secure means of communication.

North Yorkshire Police monitors all Internet email activity and content.

This communication is intended for the addressee(s) only.

Please notify the sender if received in error. Unauthorised u  
disclosure of the content may be unlawful. Opinions  
expressed in this document may not be official policy.  
Thank you for your co-operation.

\*\*\*\*\*



Amex 6.

**Extract from Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).**

***Grant, renewal and transfer of licences for sex establishments***

- 10** (1) An application for the grant, renewal or transfer of a licence under this Schedule shall be made in writing to the appropriate authority.
- (2) An application made otherwise than by or on behalf of a body corporate or an unincorporated body shall state—
- (a) the full name of the applicant;
  - (b) his permanent address; and
  - (c) his age.
- (3) An application made by a body corporate or an unincorporated body shall state—
- (a) the full name of the body;
  - (b) the address of its registered or principal office; and
  - (c) the full names and private addresses of the directors or other persons responsible for its management.
- (4) An application relating to premises shall state the full address of the premises.
- (5) An application relating to a vehicle, vessel or stall shall state where it is to be used as a sex establishment.
- (6) Every application shall contain such particulars as the appropriate authority may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5) above.
- (7) An applicant for the grant, renewal or transfer of a licence under this Schedule shall give public notice of the application.
- (8) Notice shall in all cases be given by publishing an advertisement in a local newspaper circulating in the appropriate authority's area.
- (9) The publication shall not be later than 7 days after the date of the application.
- (10) Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.
- (11) Every notice under this paragraph which relates to premises shall identify the premises.
- (12) Every such notice which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex establishment.

(13)Subject to sub-paragraphs (11) and (12) above, a notice under this paragraph shall be in such form as the appropriate authority may prescribe.

(14)An applicant for the grant, renewal or transfer of a licence under this Schedule shall, not later than 7 days after the date of the application, send a copy of the application to the chief officer of police.

(15)Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application.

(16)Where the appropriate authority receive notice of any objection under sub-paragraph (15) above, the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant.

(17)The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant.

(18)In considering any application for the grant, renewal or transfer of a licence the appropriate authority shall have regard to any observations submitted to them by the chief officer of police and any objections of which notice has been sent to them under sub-paragraph (15) above.

(19)The appropriate authority shall give an opportunity of appearing before and of being heard by a committee or sub-committee of the authority—

(a)before refusing to grant a licence, to the applicant;

(b)before refusing to renew a licence, to the holder; and

(c)before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

(20)Where the appropriate authority refuse to grant, renew or transfer a licence, they shall, if required to do so by the applicant or holder of the licence, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.

***Refusal of licences***

**12** (1)A licence under this Schedule shall not be granted—

(a)to a person under the age of 18; or

(b)to a person who is for the time being disqualified under paragraph 17(3) below; or

(c)to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made; or

*Power to prescribe standard conditions*

- 13
- (1) Subject to the provisions of this Schedule, the appropriate authority may make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licences under this Schedule are in general to be granted, renewed or transferred by them.
- (2) Regulations under sub-paragraph (1) above may make different provision—
- (a) for sex cinemas and sex shops; and
  - (b) for different kinds of sex cinemas and sex shops.
- (3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, regulations under this paragraph may prescribe conditions regulating—
- (a) the hours of opening and closing of sex establishments;
  - (b) displays or advertisements on or in such establishments;
  - (c) the visibility of the interior of sex establishments to passersby; and
  - (d) any change of a sex cinema to a sex shop or a sex shop to a sex cinema.
- (4) Where the appropriate authority have made regulations under sub-paragraph (1) above, every such licence granted, renewed or transferred by them shall be presumed to have been so granted, renewed or transferred subject to any standard conditions applicable to it unless they have been expressly excluded or varied.
- (5) Where the appropriate authority have made regulations under sub-paragraph (1) above, they shall, if so requested by any person, supply him with a copy of the regulations on payment of such reasonable fee as the authority may determine.
- (6) In any legal proceedings the production of a copy of any regulations made by the appropriate authority under sub-paragraph (1) above purporting to be certified as a true copy by an officer of the authority authorised to give a certificate for the purposes of this paragraph shall be prima facie evidence of such regulations, and no proof shall be required of the handwriting or official position or authority of any person giving such certificate.

- (d) to a body corporate which is not incorporated in the United Kingdom; 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.
- (2) Subject to paragraph 27 below, the appropriate authority may refuse—
- (a) an application for the grant or renewal of a licence on one or more of the grounds specified in sub-paragraph (3) below;
  - (b) an application for the transfer of a licence on either or both of the grounds specified in paragraphs (a) and (b) of that sub-paragraph.
- (3) The grounds mentioned in sub-paragraph (2) above are—
- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
  - (b) that 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) that the number of sex establishments 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) that the grant or renewal of the licence would be inappropriate, having regard—
    - (i) to the character of the relevant locality; or
    - (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.
- (4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(c) above.
- (5) In this paragraph "the relevant locality" means—
- (a) in relation to premises, 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.

**Summary of Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982 (as amended).**

- Allows Local Authorities to adopt the legislation.
- Allows local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate given the character of an area because, for example, the area was primarily a residential area. For the purposes of this duty 'local people' are defined as anyone who lives or works in the Local Authority area.
- Requires licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the Local Authority.
- Allows a Local Authority to reject a licence application if it is believed that the granting of a licence for a lap dancing club would be inappropriate given the character of a particular area.
- Allows a Local Authority to set a limit on the number of sexual entertainment venues that they think appropriate for a particular area.
- Allows a Local Authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to do under the Licensing Act 2003, in relation to, for example, opening hours and advertising.

This page is intentionally left blank



## Policy for the Determination of Applications for Sexual Entertainment Venues

In determining applications for sexual entertainment venue licenses the Licensing and Regulatory Committee shall treat each application on an individual basis, on its own merits, in accordance with the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

A decision to refuse the licence may not be made solely on moral grounds or that the establishment may cause offence.

### Grounds for Granting or Refusing the Application

A licence **must be** refused on any of the grounds listed in paragraph 12(1) of Schedule 3 of the Local Government (Miscellaneous provisions) Act 1982, that is to say:-

- to a person under the age of 18;
- to a person who is for the time being disqualified as being a licence holder whose licence has been revoked within the previous 12 months;
- to a person, other than a body corporate, who is not resident in the United Kingdom or who was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- to a body corporate that was not incorporated in the United Kingdom; or
- 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.

A licence **may be** refused where any of the following matters mentioned in paragraph 12(2) and (3) of the Act applies:

- (a) The applicant is unsuitable to hold a licence by reason of having been convicted of any offence or for any other reason:
- Officers will make diligent enquiries with the applicant to establish:-
    - That the operator is honest.
    - That the operator is qualified by experience to run the type of sex establishment in question.
    - That the operator understands the general conditions.
    - That the operator is proposing a management structure which delivers compliance with the operating conditions, e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for welfare of performers.
    - That the operator can be relied upon to act in the best interests of performers, eg in how they are remunerated, the facilities they enjoy, how

they are protected and how and by whom their physical and psychological welfare is monitored.

- That the operator can be relied upon to protect the public, eg transparent charging, freedom from solicitation.
- That the operator can show a track record of management of compliant premises, or that s/he will employ individuals who have such a track record.

(b) That if the licence were to be granted, renewed, varied 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, variation or transfer of such a licence if he made the application himself:

- Officers will establish that there would be no third party beneficiary by asking appropriate questions in the application form and by interviewing the applicant.

(c) That the number of sexual entertainment venues 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:

- The number can be nil, but this decision needs to be rationally underpinned. The Council has not determined any appropriate number of sexual entertainment venues.

(d) That the grant or renewal of the licence would be inappropriate, having regard to the:

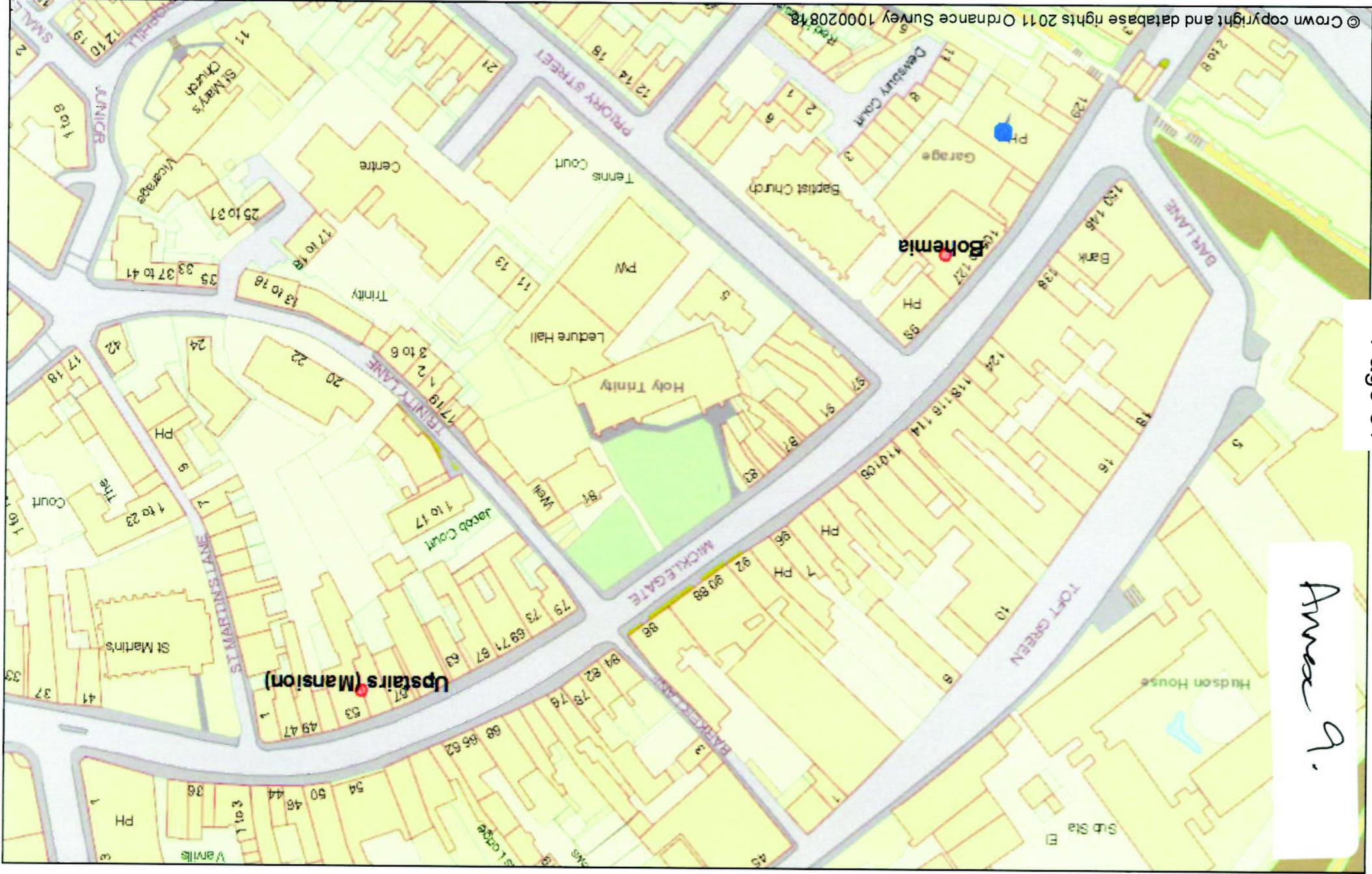
- (i) character of the relevant locality; or
- (ii) use to which any premises in the vicinity are put; or
- (iii) layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

(i) The character of the relevant locality. Relevant locality is defined in relation to premises as “the locality where they are situated”. The locality cannot include for example the whole of the administrative area or an entire town. The relevant locality might cover the area of a ward, specific estates, shopping areas or areas bounded by rivers and major roads. The relevant locality will be determined on a case by case basis dependent on the situation of the proposed licensed premises.

(ii) The use to which any premises in the vicinity are put. Vicinity is not defined but is clearly an area smaller than relevant locality. It maybe considered in the same context as with the Licensing Act 2003. Regard should not only be had to the juxtaposition of uses within the vicinity but also to the times of operation or occupation of those uses. Sensitive uses will include places of worship, schools, youth clubs, community centres, women’s refuges, parks and leisure facilities. A concentration of residential property particularly included sheltered accommodation for vulnerable groups may also cause concern.

(iii) The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made. The premises should meet or can be made to meet the layout and structural requirements set out in the “standard conditions applicable to licences issued to sex establishments”.

Area 9.



This page is intentionally left blank



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

**STANDARD CONDITIONS APPLICABLE TO LICENCES ISSUED TO  
SEX ESTABLISHMENTS**

<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
<b>1.0 DEFINITIONS</b>	<b>1</b>
<b>2.0 GENERAL</b>	<b>1</b>
<b>3.0 TIMES OF OPENING</b>	<b>1</b>
<b>4.0 CONDUCT AND MANAGEMENT OF SEX ESTABLISHMENTS &amp; 2</b>	<b>1</b>
<b>5.0 USES</b>	<b>3</b>
<b>6.0 GOODS AVAILABLE IN SEX ESTABLISHMENTS</b>	<b>3</b>
<b>7.0 APPERANCE, CONDITION AND LAYOUT OF THE PREMISES &amp; 4</b>	<b>3</b>
<b>8.0 ADDITIONAL CONDTIONS RELATING TO SEXUAL ENTERTAINMENT VENUES</b>	<b>4, 5 &amp; 6</b>
<b>ANNEX 1 – HOUSE RULES (CUSTOMERS)</b>	<b>7</b>
<b>ANNEX 2 – HOUSE RULES (PERFORMERS)</b>	<b>8</b>

## 1.0 DEFINITIONS

1.1 In these conditions save when the context otherwise requires the following expressions shall have the following meanings:

- a) “Sex Establishments”, “Sexual Entertainment Venues”, “Sex Cinema”, “Sex Shop” and “Sex Article” shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.
- b) “Premises” means a building or part of a building and any forecourt yard or place of storage used in connection with a building or part of a building which is the subject of licence for a sex establishment granted under the said Third Schedule.
- c) “Approval of the Council” or “Consent of the Council” means the approval or consent of the Council in writing.
- d) “The Council” means the City of York Council.
- e) “Film” shall have the meaning ascribed to it in the Films Act 1960-1980.

## 2.0 GENERAL

2.1 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.

2.2 The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

## 3.0 TIMES OF OPENING

3.1 Except with the written consent of the council, the premises shall not remain open to the public outside the hours licensed.

## 4.0 CONDUCT AND MANAGEMENT OF SEX ESTABLISHMENTS

- 4.1 Where a 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 is to be notified in writing to the Council within 14 days of such change. Such written details as the Council may require in respect of any new Director, Secretary or Manager are to be furnished within 14 days of a request in writing from the Council.
- 4.2 The Licensee or a responsible person nominated by him in writing for the purpose of managing the sex establishment in his absence and of whom details (including 2 photographs) have been supplied to and approved in writing by the Council shall be in charge of and upon the premises during the whole time they are open to the public. This condition shall be read in conjunction with condition 4.3 below.
- 4.3 The Licensee shall maintain a daily register in which he shall record the name and address of any person who is to be responsible for managing the sex establishments in his unavoidable absence, and the names and addresses of those employed in the sex establishment. The register is to be completed each day within 30 minutes of the sex establishments opening for business and is to be available for inspection by the Police and by authorised officers of the Council.
- 4.4 The name of the person responsible for the management of a sex establishment be he/she the Licensee or a Manager approved by the Council shall be prominently displayed within the sex establishment throughout the period during which he/she is responsible for its conduct.
- 4.5 The Licensee shall retain control over all portions of the premises and shall not let, licence or part with possession of any part of the premises.
- 4.6 The Licensee shall maintain good order in the premises.
- 4.7 No person under the age of 18 shall be admitted to the premises and no person under the age of 18 shall be employed in the business of a sex establishment.
- 4.8 A notice stating that persons under the age of 18 may not enter the premises shall be prominently displayed at the entrance.
- 4.8 The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.
- 4.9 No part of the premises shall be used by prostitutes (male or female) for the purposes of solicitation or of otherwise exercising their calling.

- 4.10 Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of personal solicitation outside or in the vicinity of the premises.
- 4.11 The Licensee shall comply with all statutory provisions and any regulations made thereunder.
- 4.12 The Licensee shall ensure that during the hours the sex establishment is open for business every employee wears a badge of a type approved by the Council indicating his name and that he is an employee. In the case of Sexual Entertainment Venues other approved forms of identification maybe accepted.
- 4.13 A copy of the licence and of these conditions shall be exhibited in a prominent place within the premises where the public may see and read them. These displays shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and the copy of these conditions shall be retained in a clean and legible condition.

**5.0 USES**

- 5.1 No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
- 5.2 No change between the uses of a sex shop, sex cinema or sexual entertainment venue shall be effected without the consent of the Council.
- 5.3 Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.
- 5.4 A sex shop shall be conducted primarily for the purpose of the sale or hire of goods by retail.

**6.0 GOODS AVAILABLE IN SEX ESTABLISHMENTS**

- 6.1 All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show to persons who are inside the shop the respective prices being charged.
- 6.2 All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the sex establishment.
- 6.3 The Licensee shall, without charge, display and make available in the Licensed Sex Establishment, such free literature on infections, safer sex, local services and other related sexual health issues as may be published by York Teaching Hospital NHS Foundation Trust or successor organisation and any other providers as maybe. Such literature is to be displayed in a prominent position approved by the Council adjacent to all cash points in the Licensed Sex Establishment.

**7.0 APPEARANCE, CONDITION AND LAYOUT OF THE PREMISES**

- 7.1 The Licence Holder shall comply with requirements relating to external appearance of the licensed premises as the Council may consider reasonably necessary. The Licensee shall give prior notice to the Council of any proposed change to the external appearance of the premises and shall support the prior notice by the submission of detailed drawings to show the proposed changes.

- 7.2 Without prejudice to the generality of condition 7.1 above, no display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises unless the prior approval of the Council has been received in writing.
- 7.3 The entrance doors to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers by.
- 7.4 Windows and openings to the premises other than the entrances shall be obscured in a manner and with such material as may be approved by the Council. Plans and drawings showing the proposed scheme shall be submitted to the Council for prior approval. This condition shall not be construed as lessening the obligation of the Licensee under condition 7.3 hereof.
- 7.5 Lighting in all parts of the premises as approved by the Council shall be in operation continuously during the whole of time that the sex establishment is open to the public.
- 7.6 The number, size and position of all doors or openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:
- a) Access to the premises may only be through 2 or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises.
  - b) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "Exit".
  - c) Doors and openings which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked "Private".
  - d) Save in the case of emergency no access shall be permitted through the premises to any unlicensed premises adjoining or adjacent.

- 7.7 The external doors to the sex establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 7.8 No fastening of any description shall be fitted upon any booth or cubicle within the sex establishment nor shall more than 1 person (including employee be present in any such booth or cubicle at any time).
- 7.9 Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.
- 7.10 All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

## **8.0 ADDITIONAL CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES**

- 8.1 The premise will be conducted in a decent, sober and orderly manner at all times. Steps will be taken to ensure that none of the following takes place:
- a. indecent behaviour including sexual intercourse
  - b. the offer of any sexual or other indecent service for reward
  - c. unlawful possession and/or supply of drugs controlled by the Misuse of Drugs Act 1971.
  - d. any acts of violence against persons or property and/or the attempt or threat of such act likely to cause a breach of the peace.
- 8.2 No one under the age of 18 shall be permitted to enter the premises (or remain on the premises) whilst entertainment of an adult nature is being provided.
- 8.3 All performers shall be over 18 years of age.
- 8.3 Notices to be displayed within the premises and at the entrance informing customers of the "House Rules" that affect them and a warning that "adult entertainment" is provided within the premises.
- 8.4 Written information shall be given to the dancers/entertainers advising them of the house rules for performers and customers and possible consequences of failure to comply.
- 8.5 Adult entertainment shall not take place in a location that could be viewed from outside the premises.

- 8.6 Advertising of adult entertainment either on the premises or otherwise shall not include any photographs or images which indicate that entertainment involving nudity or sexual performance takes place on the premises.
- 8.7 CCTV for both monitoring and recording shall be installed, maintained and operated in accordance with Data Protection guidelines and will cover all areas where dancing takes place. All cameras shall continually record whilst the premises are open to the public and recordings shall be kept for a period of 28 days with times and dates indicated. These recordings shall be kept secure and shall be made available to an authorised officer of the Local Authority or a Police Officer on request.
- 8.8 Performers shall be provided with separate dressing/changing rooms which shall be located so as to be separate and set apart from the public facilities. No person other than performers and authorised staff will be allowed in or near the dressing/changing room. Safe and controlled access to the dressing/changing room will be maintained at all times.
- 8.9 There shall be at least one female member of staff authorised to be responsible for the safety and welfare of the performers.
- 8.10 SIA (Security Industry Authority) registered door supervisors shall be positioned at all entrances to the premises throughout the performance and shall be present in the room/area in which the performance takes place.
- 8.11 Dance entertainment shall be given only by performers/entertainers who are engaged exclusively for that purpose. Audience participation shall not be permitted.
- 8.12 Dance entertainment shall only be performed in the areas of the club as marked on the plans deposited with the Licensing Authority and with the Authority's approval. These areas can only be changed with the approval of the Licensing Authority.
- 8.13 If performers are invited to have a drink with a customer, the performer will remain fully clothed during this period. Performers will not be paid commission on the sale of beverages.
- 8.14 On leaving the premise performers will be escorted to their transport by a door supervisor.

- 8.15 Adult entertainment shall not take place before 9.00 pm.
- 8.16 The premises licence holder shall ensure that the house rules for both customers and performers are strictly adhered to.

## **ANNEX 1**

### **House Rules (Customers)**

1. Dancers may only dance to seated customers.
2. Customers must remain clothed at all times.
3. Dancers must not be touched by the customer while they are dancing except for the placing of gratuities into the hand or garter of the dancer at the beginning or conclusion of the performance.
4. No person shall take any video recordings or photographs by any means of the authorised adult entertainment.
5. No persons other than performers and authorised staff shall be permitted in the dressing/changing rooms.
6. Dancers shall re-dress at the conclusion of the performance.
7. Customers who fail to comply with these rules shall be removed from the premise by the management or security staff
8. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.
9. The duty manager and security staff will ensure that all customers and performers adhere to the house rules.

## **ANNEX 2**

### **House Rules (Performers)**

1. All performers shall be over 18 years of age. Prior to engagement all performers will provide documentation that they are aged 18 years or over. Checks will be made to make sure the necessary legal work permits to work in the United Kingdom are in place. Should performers be employed from agencies the same checks will be carried out. Management shall keep written record of these checks which shall be available to authorised officers of the council and the Police.
2. No performer shall be allowed to work, if under the judgement of the management, they appear to be intoxicated or under the influence of illegal substances.
3. No performance shall involve the use of sex articles (as defined in the Local Government (Miscellaneous Provisions) Act 1982).
4. Performers shall not use any props or clothing in the act which portrays them as a minor.
5. Garters worn for the collection of gratuities shall be situated no higher than mid thigh.
6. Dancers shall re-dress at the conclusion of the performance and are to remain clothed (minimum bikini top and bottoms) at all times except when giving a performance.
7. Performances of adult nature must be restricted to the designated areas.
8. All staff and performers are forbidden to give personal details including real name and address or other contact details of any other performer or staff member to a customer. Performers are strongly advised not to pass their own personal details to customers.
9. The duty manager and security staff will ensure that all customers and performers comply with the house rules.

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 3.32 – 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 Determination of Applications for Sexual Entertainment Venues and the Standard Conditions Applicable to Licences issued to Sex Establishments apply 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.

## **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.

	
<b>Meeting of Gambling, Licensing &amp; Regulatory Committee</b>	19 December 2011
Report of the Assistant Director – Communities & Neighbourhoods	

**Local Government (Miscellaneous Provisions) Act 1982  
Schedule 3 as amended by Policing and Crime Act 2009  
Grant of Sex Establishment Licence for  
Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ**

**Summary**

1. This report seeks Members determination of an application for the grant of a Sex Establishment Licence for a Sexual Entertainment Venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ.
2. Name of applicant: Mr E J Gallagher & Mr A G Whitney
3. Summary of Application: A copy of the application is attached at Annex 1 of this report and is summarised as follows: Hours of Opening Monday to Sunday 21:00 hrs to 03:00 hrs and 18:00 hrs to 04:30 hours on York Race Days.
4. Upstairs (Mansion) currently operates with a premises licence issued under the Licensing Act 2003 which allows the following licensable activities:

Films	Monday – Sunday 10:00 hrs – 03:00 hrs
Live music	As above
Recorded music	As above
Performance of dance	As above
Activities like music/dance	As above
Facility for making music	As above
Facilities for dancing	As above

Facility like music/dance	As above
Late night refreshment	Monday – Sunday 23:00 hrs – 03:00 hrs
Supply of alcohol	Monday – Sunday 10:00 hrs – 02:30 hrs
Opening hours	Monday – Sunday 10:00 hrs – 03:00 hrs

A copy of the premises licence is attached at Annex 2 of this report.

5. Previously on York race days Upstairs operated between 17:00 hours and 04:00 hours under a Temporary Events Notice applied for under the Licensing Act 2003. This allowed the premises to open outside the normal operating hours.
6. In 2010 the premises operated under 3 Temporary Event Notices covering a period of 4 days. In 2011 the premises operated under 5 Temporary Event Notices covering a period of 15 days.

## **Background**

7. On 6 April 2010, section 27 of the Policing and Crime Act 2009 became operative. This legislation reclassified lap dancing clubs and other similar venues as ‘sexual entertainment venues’; a sex establishment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This allowed Local Authorities who adopted the provisions of the legislation to regulate lap dancing clubs and similar venues under the same regime as sex shops. An extract from the legislation is attached at Annex 6 and summarised at Annex 7 of Bohemia’s report.
8. Previously lap dancing premises were regulated under the Licensing Act 2003 (the ‘2003 Act’) and required a Premises Licence under Section 1 of the 2003 Act. There were no special provisions made within the 2003 Act for lap dancing clubs and applications for licences were submitted in the same way as a pub or restaurant. The only mandatory conditions that apply to a premises licence relate to the sale of alcohol, the use of door staff and the showing of films. It is

only when relevant representations are received by an interested party that the Authority can, following a hearing, impose other conditions or reject the application if deemed necessary to promote one of the four licensing objectives. Therefore, the powers available to Local Authorities to control the establishment of lap dancing premises were limited.

9. Sexual entertainment venues are defined as ‘any premises at which relevant entertainment is provided for a live audience for the financial gain of the organiser or performer’. The meaning of relevant entertainment is ‘any live performance or live display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)’.
10. This Authority adopted the provisions of the legislation on 7 October 2010 when the resolution was approved by full council. A copy of City of York Council’s Policy for the Determination of Applications for Sexual Entertainment Venues is attached at Annex 8 of Bohemia’s report.
11. With the new legislation there are no ‘grandfather rights’ for existing clubs. If they wish to continue trading they need to apply for a Licence under the new regime. A transitional period of 12 months was given to existing clubs to apply for a new Licence. Premises, which failed to apply for a new licence within this period, faced closure.
12. York currently has three established licensed sex shops and two premises that require licensing as sexual entertainment venues both in Micklegate, one of which is Upstairs. This premise has operated without problems since opening. A map of the area showing Upstairs in relation to the other sexual entertainment venue is attached at Annex 9 of Bohemia’s report.
13. Standard conditions for the licensed sex shops were amended to include sexual entertainment venues and were approved by full Council. The lack of problems from existing licensed premises would indicate that these conditions

provide sufficient safeguards. A copy of the conditions is attached at Annex 10 of Bohemia's report.

### **Consultation**

14. Consultation was carried out by the applicant and the Licensing Authority in accordance with paragraph 10 of Schedule 3 of the 1982 Act relating to the process which the applicant must follow for the application to be considered valid. In addition all Ward Councillors were informed by way of register.
15. As a result of the consultation two objections were received from residents in the Micklegate area. Copies of the objections are attached at Annex 3 (confidential) and Annex 4 of this report.
16. Schedule 3, paragraph 10(17) of the 1982 Act (as amended) states "The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant." No such consent has been received. Full copies of the objections have been provided to the Committee, and redacted copies to the applicant.
17. After consultation with North Yorkshire Police, the applicant agreed to reduce the hours applied for to reflect the hours of operation authorised by the existing premises licence. Therefore amending the hours applied for to; standard operating hours 21:00 hrs until 03:00 hrs daily with non-standard timings on York Racecourse Race Days only as 18:00 hours to 04:30 hours. A copy of the agreement by way of email is attached at Annex 5 of this report.

### **Other Relevant Information**

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

### **Options**

19. 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:

20. Option 1: Grant the licence in the terms applied for.
21. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
22. Option 3: Reject the application.

### **Analysis**

23. The following could be the result of any decision made by this Committee:
24. Option 1: This decision could be appealed at Magistrates Court by an objector to the application.
25. Option 2: This decision could be appealed at Magistrates Court by the licence applicant or by an objector to the application.
26. Option 3: This decision could be appealed at Magistrates Court by the licence applicant.

### **Council Plan**

27. The approved City of York Council Standard Conditions Applicable to Licences issued to Sex Establishments will support the Council's priority to protect vulnerable people and create jobs and grow the economy.

### **Implications**

28.
  - **Financial** - N/A
  - **Human Resources (HR)** – N/A
  - **Equalities** – N/A

- **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the objectors.
- **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**

29. All Members are aware that any decision which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
30. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

### **Recommendations**

31. Members grant the application with the operating hours agreed with North Yorkshire Police as detailed in paragraph 17.

Reason: This premise has operated as lap dancing venue under the provisions of the Licensing Act 2003 since September 2006 without incident.

**Contact Details**

<b>Author:</b>	<b>Chief Officer Responsible for the report:</b>		
Lesley Cooke Licensing Manager Ext 1515	Steve Waddington Assistant Director Housing & Public Protection Ext 4016		
	<b>Report Approved</b>	√	<b>Date</b> 7/12/11

<b>Wards Affected:</b> Micklegate
-----------------------------------

**Annexes**

- Annex 1** - Copy of application
- Annex 2** - Copy of premises licence issued under the Licensing Act 2003
- Annex 3** - Copy of Objectors Letters (confidential)
- Annex 4** - Copy of Objectors Letters
- Annex 5** - Copy of agreement between applicant and North Yorkshire Police

**Background Papers (all attached as Annexes to Bohemia's report)**

- Annex 6** - Extract from Schedule 3
- Annex 7** - Summary of Schedule 3
- Annex 8** - Copy of CYC Policy for the Determination of Applications for Sexual Entertainment Venues
- Annex 9** - Map showing location of premises
- Annex 10** - Copy of Standard Conditions Applicable to Licences issued to Sex Establishments
- Annex 11** - Legislation and Policy Considerations

This page is intentionally left blank

**SCHEDULE 3 - CONTROL OF SEX ESTABLISHMENTS**

*Annex 1*

**Application for the Grant / Renewal / Transfer of a Sex Establishment Licence  
Sexual Entertainment Venues**

Please complete this application form in ink and block capitals.

02 NOV 2011

RECEIVED

Type of application    Grant     Renewal     Transfer

1. If application is made on behalf of an individual please state:

Full Name	
Permanent address	
Age	Date of birth    Place of birth

2. Give full names and private addresses of all directors or other persons responsible for management of the establishment:

Name	MR. E. J. GALLAGHER.		
Address	12 STAMING LANE		
	WILBERFOS, YORK YO41 5NE		
Age	34	Date of birth	28.05.77
		Place of birth	LONDON.

Name	MR. A. G. WHITNEY		
Address	12 ABBOTSWAY		
	YORK, YO1 9LD		
Age	36	Date of birth	02/06/75
		Place of birth	ALBANYE, HVS.

Name			
Address			
Age		Date of birth	
		Place of birth	

Name			
Address			
Age		Date of birth	
		Place of birth	

3. Have you any convictions recorded if a body corporate or unincorporated body that body or any of its directors or other persons responsible for its management? If so please state:

Date of Conviction	Offence	Sentence (including suspended sentence)

- (a) All convictions must be disclosed  
 (b) Spent convictions, as defined below, should not be included

Sentence	Becomes spent after
Imprisonment of between 6 months and 30 months	10 years
Imprisonment of up to 6 months	7 years
Borstal training	7 years
A fine or other sentence not otherwise covered in this table	5 years
Absolute discharge	6 months
Probation order, conditional discharge or bind over	1 year (or until order expires, whichever is longer)
Detention Centre Order	3 years
Remand home, attendance centre or approved school order	The period of the order and a further year after the order expires
Hospital order under the Mental Health Act	The period of the order and a further 2 years after it expires
Cashiering, discharge with ignominy or dismissal with disgrace from the Armed Forces	10 years
Dismissal from Armed Forces	7 years
Detention	5 years

Note

- (i) A sentence of more than 2½ years imprisonment can never become spent.  
 (ii) If you were under 17 years of age on the date of conviction, please halve the period shown in the right-hand column.

4. Have you been resident in the United Kingdom throughout a period of six months immediately preceding the date of this application? YES / NO
5. If the application is made on behalf of a body corporate is that body incorporated in the United Kingdom? YES / NO

YES  NO

6. Full name and address of premise desired to be used as a sex establishment:

Name	UPSTAIRS
Address	53-55 WICKLEGATE
	YORK, YO4 4BJ

If this application relates to a vehicle/vessel/stall give description and state where it is to be used as a sex establishment:


7. On which days and hours do you wish to trade:

Day	Hours	Day	Hours	Day	Hours	Day	Hours
Monday	18.00-04.30	Tuesday	18.00-04.30	Wednesday	18.00-04.30	Thursday	18.00-04.30
Friday	18.00-04.30	Saturday	18.00-04.30	Sunday	12.00-08.00		

\* THESE NAMES WOULD BE ON ONE NAME METERS ONLY  
 ACCOMPANIED BY THE NEAREST T.E.N.

8. Are the premises licensed under \_\_\_\_\_ Act 2003?  YES  NO

9. Are you (or, if a corporate or unincorporated body, that body) disqualified from holding a licence for a sex establishment?  YES  NO

10. Have you ever been refused a licence for a sex establishment?  YES  NO

If yes please give details

Empty rectangular box for providing details of refusals.

11. In the case of a transfer:

Name of Existing Licensee \_\_\_\_\_ being the existing licensee of the within named premises hereby consent to the transfer of licence to \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

I declare that I have checked the information given on this application form and to the best of my knowledge and belief it is correct, and that:

- (a) The fee is enclosed.
- (b) A copy of the application has been served on North Yorkshire Police, Headquarters, Fulford Road, York, YO10 4BY.
- (c) A notice publicising this application will be displayed for 21 days beginning with the date of the application on or near the premises and in a place where it can conveniently be read by the public.
- (d) Notice of the application will be given by publishing an advertisement in a local newspaper circulating in the local area. The publication of the notice shall not be later than seven days after the date of application.

Please provide contact details for correspondence associated with this application:

Name	MN. E. GRAYHAMEN
Address	12 STORKING LANE
Contact Number / Email	017391351799

Signed  Date 1.11.11

when completed this form should be returned to:

Licensing Services  
City of York Council  
9 St Leonard's Place  
York  
YO1 7ET

TO: LICENSING DEPARTMENT  
CITY OF YORK COUNCIL

FROM: ED GALLAGHER  
DIRECTOR  
UPSTAIRS VIP LTD

REF: SEX ESTABLISHMENT LICENSE  
UPSTAIRS  
53 -55 MICKLEGATE  
YORK  
Y01 6LJ

This is to confirm that the above named premises (Upstairs) will only operate within the following hours as per our already existing premises license.

21.00 hours until 03.00 hours Monday through until Sunday inclusive.

Alcohol will be served until 02.30 hours Monday through until Sunday inclusive.

We also confirm that the above named premises (Upstairs), will operate the following hours during Race Meetings at York Race Course. These hours will be accompanied by the relevant Temporary Event Notice.

18.00 hours until 04.30 hours Monday through to Sunday inclusive.

Yours sincerely,



Ed Gallagher  
07739351799

## 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 3.32 – 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 Determination of Applications for Sexual Entertainment Venues and the Standard Conditions Applicable to Licences issued to Sex Establishments apply 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.

## **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

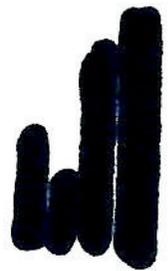
3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

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.

Document is Restricted

This page is intentionally left blank

*Annex 1*



21 NOV 2011  
acc 21/11 R

18 November 2011

Licensing Office  
9 St Leonard's Place  
York YO1 7ET

**CYC/MAU 19257 Application for Grant of Establishment Licence for Sexual Entertainment Venue: Upstairs (1st Floor Mansion) 53/55 Micklegate York**

As a local resident I would wish to object to this application on the grounds of public nuisance.

This establishment is likely to attract rowdy groups of men such as stag parties and raccoons who will disturb residents and visitors - especially if the premises are open until 4.30am.

In addition I would argue that having two such establishments in such a small area exceeds the number that the Authority should consider as being appropriate for this residential area and the application should be regarded as failing to comply with the terms of the Authority's Policy for the Determination of Applications for Sexual Entertainment Venues.

I particularly object to the proposal that the opening hours should be brought forward to 6.00pm on Race Days. If granted this would apply to approximately 17 days next year and result in antisocial behaviour and additional noise nuisance for the many local residents who live in close proximity to The Mansion.

In summary I hope that the application will be rejected, or at the very least, the Authority's Policy that adult entertainment should not take place before 9.00pm should be applied.

Yours sincerely,



17 NOV 2011  
OCT 21 11 AM '81

15<sup>th</sup> November 2011

Re: CYC/MAU 019257

121823

Grant of Sex Establishment licence for a Sexual Entertainment Venue. 53-55, Micklegate, York.

Dear Sir/Madame,

I would like to object to this application as I believe a lap dancing club will result in noise and public nuisance in and around Micklegate.

I also object to the venue opening long hours on Race Days. Micklegate has a large proportion of residential properties and we already experience noise and nuisance on race days. Customers departing at 04.30 hrs are unlikely to do so quietly no matter how many well intentioned notices are posted on doors leading from the venue.

I hope the council will reject this application on the grounds of noise and nuisance to both tourists and residents.

Yours sincerely,

[Redacted signature block]

Ames

**Cockerill, Janice**

---

**From:** Wilkinson, Mick [Mick.Wilkinson@northyorkshire.pnn.police.uk] on behalf of York Licensing [YorkLicensing@northyorkshire.pnn.police.uk]  
**Sent:** 30 November 2011 07:10  
**To:** CAN Licensing Unit  
**Subject:** New Grant (Sex Establishment) - Mansion, Micklegate, York

We have received an application from E.J. Gallagher for the grant of a Sex Establishment at the above venue.

The Police would like to comment that we would seek to have the opening hours of the venue in line with those of the current Premises Licence save for days when York Race are held, which is in line with the applicants Operating Schedule and subsequent letter he submitted i.e:-

"Standard Operating Times" for the Sex Establishment Licence shall be the "standard" times as per the Premises Licence.

"Non Standard Operating Times" for the Sex Establishment Licence shall be 1800hrs until 0430hrs on York Racecourse Race Days only.

Should you have any further queries about this, or any other licensing matter, then please don't hesitate to get in touch.

Regards,

*Mick Wilkinson*

PC952

*Police Licensing Unit (York, Selby, Hambleton & Richmondshire)*

*Community Safety Dept*

*Landline - 01904 669945*

*Mobile - 07802 385220*

*E Mail [mick.wilkinson@northyorkshire.pnn.police.uk](mailto:mick.wilkinson@northyorkshire.pnn.police.uk)*

*<<<<mailto:mick.wilkinson@northyorkshire.pnn.police.uk>>>>*

\*\*\*\*\*

Internet email is not to be treated as a secure means of communication.

North Yorkshire Police monitors all internet email activity and content.

This communication is intended for the addressee(s) only.

Please notify the sender if received in error. Unauthorised use or

disclosure of the content may be unlawful. Opinions

expressed in this document may not be official policy.

Thank you for your co-operation.

\*\*\*\*\*

This page is intentionally left blank