

	
<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  
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

**Wards Affected:** Micklegate

## Annexes

- Annex 1** - Copy of application
- Annex 2** - Copy of premises licence issued under the Licensing Act 2003
- Annex 3** - Copy of 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