

	
Meeting of Gambling, Licensing & Regulatory Committee	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

Author:	Chief Officer Responsible for the report:		
Lesley Cooke Licensing Manager Ext 1515	Steve Waddington Assistant Director Housing & Public Protection Ext 4016		
	Report Approved	√	Date 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 (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