

	
<b>Meeting of Gambling, Licensing &amp; Regulatory Committee</b>	23 February 2015
Report of the Assistant Director – Housing & Community Safety	

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

**Summary**

1. This report seeks Members determination of an application to renew a Sex Establishment Licence for a sexual entertainment venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ. There is another application before Members on the Agenda requesting a variation of the licence. Should the renewal application be granted, Members will then be asked to determine the application for variation of the licence.
2. Name of applicant: Upstairs VIP Limited
3. Summary of Application: A copy of the renewal application is attached at Annex 1 of this report.
4. A sex establishment licence is valid for 12 months, the licence holder must submit an application to renew the licence to the licensing authority before the existing licence expires if they wish to continue running a sexual entertainment venue.

**Background**

5. On 6 April 2010, section 27 of the Policing and Crime Act 2009 was introduced. This legislation reclassified lap dancing clubs and other similar venues as ‘sexual entertainment venues’; a sex establishment under Schedule 3 of the Local Government

(Miscellaneous Provisions) Act 1982. This allowed Local Authorities who adopted the provisions of the legislation to regulate lap dancing clubs and similar venues under the same regime as sex shops.

6. Sexual entertainment venues are defined as 'any premises at which relevant entertainment is provided for a live audience for the financial gain of the organiser or the entertainer'. The meaning of relevant entertainment is 'any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)'.
7. 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 2.
8. Standard conditions for the licensed sex shops were amended to include sexual entertainment venues and were approved by full Council. A copy of the conditions is attached at Annex 3.

## **Consultation**

9. Consultation was carried out by the applicant and the Licensing Authority in accordance with paragraph 10 of Schedule 3 of the 1982 Act relating to the process which the applicant must follow for the application for renewal to be considered valid.
10. As a result of the consultation an objection has been received from North Yorkshire Police. This is attached at Annex 4 and the main points in relation to this application are summarised as follows:-

North Yorkshire Police objection is based upon an alleged breach of licence conditions witnessed during a compliance visit at the premises on 24 October 2014. It was noted that not all the areas used for the provision of SEV dancing were covered by CCTV as stipulated in Condition 8.7. Also at the time of the visit the CCTV was unable to be viewed and it was unknown which cameras, if any, were recording or working in compliance with Condition 8.7. The police consider the provision of CCTV within every booth

necessary to protect the dancers should the customers breach the “customer code” rules and to ensure the “no contact” rules are enforced. CCTV footage also provides evidential quality material for use during criminal investigations and prosecutions.

11. There are no further objections to the renewal application.
12. A map showing the location of Upstairs, 53-55 Micklegate is attached at Annex 5.

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

13. When considering the renewal application, the Authority does not have an unfettered discretion as to whether to refuse an application or grant a renewal. The grounds on which an application could be refused are set out in paragraph 12 to Schedule 3 of the 1982 Act, which is attached at Annex 6.

### **Options**

14. 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:
15. Option 1: Grant a renewal of the licence.
16. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.
17. Option 3: Refuse the application for renewal on one of the appropriate ground within paragraph 12 to Schedule 3 of the 1982 Act (as amended).

### **Analysis**

18. The following could be the result of any decision made by this Committee:
19. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application.

20. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
21. Option 3: This decision could be appealed at Magistrates Court by the licence applicant.

### **Council Plan**

22. 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**

23. The direct implications arising from this report are:
  - **Financial** - N/A
  - **Human Resources (HR)** – N/A
  - **Equalities** – N/A
  - **Legal** – A decision to refuse the application or impose additional conditions could be appealed at the Magistrates Court by the applicant.
  - **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
  - **Information Technology (IT)** – N/A
  - **Property** – N/A
  - **Other** – none

### **Risk Management**

24. 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.

25. The report details the options available to the panel in determining the application and recommends that a decision be reached. Provided the decision complies with paragraph 24 above there are no known risks involved with this recommendation.

### Recommendations

26. Members determine the application for the grant of the licence in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by the Policing and Crime Act 2009.

Reason: To consider the objections received as required by the legislation

### Contact Details

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	<b>Report Approved</b>	√	<b>Date</b> 13 <sup>th</sup> Feb 15

**Wards Affected:** Micklegate

### Annexes

- Annex 1** - Copy of application for renewal
- Annex 2** - Copy of CYC Policy
- Annex 3** - Copy of Standard Conditions
- Annex 4** - Copy of Police objection
- Annex 5** - Map showing location of premises
- Annex 6** - Grounds to Refuse
- Annex 7** - Legislation Extracts – Renewal Applications