

Cheltenham Borough Council

Licensing Committee – 7 February 2014

Application for a Sexual Entertainment Venue Licence

Report of the Licensing & Business Support Team Leader

1. Executive Summary

- 1.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, allows applicants to apply for a Sexual Entertainment Venue (SEV) licence where they wish offer “relevant entertainment” (as defined at paragraph 2.5 of the report) on a frequent basis (as defined at paragraph 2.4 of the report).
- 1.2 In this case an application for a SEV licence was made on 13.12.2013 by Bath Road Property Limited in respect of Diamond Gentlemen’s Club (previously Voodoo) at 12 - 14 Bath Road, Cheltenham, GL53 7HA.
- 1.3 The applicant has applied to:
 - 1.3.1 Offer relevant entertainment at the premises every day 20:00 – 04:00;
 - 1.3.2 Vary the standard condition "During any performance there must be no physical contact between the performer and any member of the viewing public. A safe distance of 90cms (36 inches) should be maintained between performers and customers during all performances." to remove the 36 inch rule so that the condition reads “During any performance there must be no physical contact between the performer and any member of the viewing public”; and
 - 1.3.3 For the following non-standard timings “Operating hours from 1100 until 0400 on all Cheltenham race days. At the start of British Summertime, the terminal hours of the operation shall be extended by one hour.”
 - 1.3.4 A copy of the application form is attached at **Appendix A**. A copy of the premises layout is attached at **Appendix B**, a location map **Appendix C** and copies of the house rules at **Appendix D**.

2. Implications

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2. Background

- 2.1 On the 1st of October 2010, Full Council approved the adoption of the amended provision of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to take effect in the borough on the 1st of December 2010.
- 2.2 Since the adoption, any premises that want to offer “relevant entertainment” can only do so by obtaining a Sexual Entertainment Venue licence.
- 2.3 Relevant entertainment is defined as any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- 2.4 Under the Act a premises can provide relevant entertainment on an infrequent basis without the need for a Sexual Entertainment Venue licence. An infrequent basis is defined under the Act as no relevant entertainment has been provided on more than 11 occasions within a 12 month period and no such occasion has been begun within a period of one month beginning with the end of the previous occasions and no such occasion has lasted longer than 24 hours. Any premises which wish to offer relevant entertainment more frequently is required to apply for a Sexual Entertainment Venue licence.

3. Consultation

- 3.1 The applicant has advertised the application in accordance with the statutory requirements set out in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

4. Objections

- 4.1 In determining the application, Members must have due regard to any observations made by the Chief Officer of the Police and any other comments made by anybody else.
- 4.2 Members are to note in particular that any objection should relate to either the mandatory or discretionary grounds for refusal set out below.
- 4.3 Objections made on moral grounds or values are not relevant to either the mandatory or discretionary grounds for refusal.

Chief Officer of Police - Gloucestershire Constabulary

- 4.4 No objection has been received from Gloucestershire Constabulary. They have however requested the following conditions be added to the licence:
 - 4.4.1 Rules/agreement as to conduct and code of conduct be incorporated into the licensing conditions;
 - 4.4.2 A list of performers shall be available on the premises for immediate production if requested by the Police or the Council. This list shall contain full names, dates of birth and contact details (address and/or telephone number);
 - 4.4.3 A minimum of one SIA -registered door supervisor shall be employed in the designated area where sexual entertainment is taking place and they shall intervene promptly to ensure compliance with codes of conduct /house rules;

- 4.4.4 No drinks promotions take place within the premises;
- 4.4.5 That handbills or flyers not contain any indecent photographs and that they are not displayed in the immediate vicinity of the premises or elsewhere suggesting that sexual entertainment takes place on the licensed premises. If flyers are used they should not be given to persons who look under 21 years of age and if immediately discarded by the public they should be picked up by person handing them out.

Other Objections

- 4.5 There have also been 193 representations from other persons. These are outlined in the background papers.
- 4.6 A summary of the salient issues raised by the objectors are listed below. Members are to note that the intention of the summary below is to identify the salient issues raised by the objectors. Members should read the accompanied background papers to ensure you are aware of all the issues raised by the objectors.
- 4.6.1 The proposed location is inconsistent with the character of the location particularly because it is situated:
- next door to the public park (Sandford Park);
 - in a mix of residential and commercial premises;
 - close to the Playhouse Theatre, Janet Marshall Dance School, Salvation Army Church, St. John's Primary School, Church of St Luke's, Hickory Dickories Nursery, Cheltenham Assessment Centre, Angel Day Nursery, Cheltenham College and Prep School, Cheltenham Ladies College, Cambray Baptist Church, Inlingua Language School, University hall of residence & public car park; and
 - on a main thorough fare connecting Montpellier and The Promenade.
- 4.6.2 Objections based on gender equality on the basis that sexual entertainment is degrading to women.
- 4.6.3 The grant of this licence will damage the character of this part of town.
- 4.6.4 The grant of this licence will result in more vehicles parking in the area, and more people that will result in longer and more intrusive queuing causing more noise and nuisance.
- 4.6.5 The grant of this licence is inconsistent with The Gender Equality Duty 2007.
- 4.6.6 The grant of this licence will result in increased need/cost of policing in the area.
- 4.6.7 That end of the High Street and town centre is already struggling and suffers from too many vacant property units. The grant of a SEV licence will result in persons being unlikely to rent space in the vicinity of a sexual entertainment venue.
- 4.6.8 The grant of this licence is inconsistent with Cheltenham Borough Council's 'Equality and Diversity' policy.
- 4.6.9 A number of objectors have made reference to a recent court case involving another premises in the town where a number of dancers kidnapped an operator as an example of the "type" of activity associated with SEVs.

4.6.10 A number of objectors have sited the 4 licensing objectives under the Licensing Act 2003 as their grounds for objection.

5. Policy Considerations

5.1 The Council adopted a policy statement on the licensing and regulation of sexual entertainment venues on the 4th of February 2011.

Grounds for Refusal

5.2 Paragraph 3 of the policy sets out the mandatory and discretionary grounds for refusal of a SEV licence.

Mandatory Grounds

5.3 A licence cannot be granted:

- a) to any person under the age of 18 years;
- b) to any person who is for the time being disqualified due to the persons having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- c) to any 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 made; or
- d) to a body corporate which is not incorporated in an EEA State; or
- e) to any person who has, within a period of 12 months immediately preceding that date when the application was made, been refused that 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.

Discretionary Grounds

5.4 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 Sexual Entertainment Venues, in the relevant locality at the time which the authority consider the application is equal to or exceeds the number which the authority consider is appropriate for the 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 lay out, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

5.5 Members are to note paragraph 3.3 of the policy. Any decision to refuse a Sexual Entertainment Venue licence must and can only, relate to either the mandatory or discretionary grounds for refusal.

Location of Premises

- 5.6 In considering if the grant, renewal or variation of the licence would be inappropriate, having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the Committee shall consider, among other considerations, whether the grant of the application would be inappropriate, having regard to:
- a) The fact that the premises are sited in a residential area.
 - b) The premises are sited near shops used by or directed to families or children, or on frontages frequently passed by the same.
 - c) The Premises are sited near properties which are sensitive for religious purposes e.g. churches, mosques, temples.
 - d) The premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets.

Pool of Standard Conditions

- 5.7 Subject to the Committee's decision relating to paragraph 1.3.2, the policy contains a pool of standard conditions that will apply if Members are minded to grant the application. A copy of these conditions is attached to this report at **Appendix E**.
- 5.8 In addition to the standard conditions, Members can grant the application on such terms and conditions and subject to any restrictions it may consider necessary.

6. National Guidance

- 6.1 The government has issued non-statutory guidance to aid local authorities carrying out their functions under Schedule 3, as amended by section 27.
- 6.2 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. A sexual entertainment venue is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer." (2.1)
- 6.3 The meaning of 'relevant entertainment' is "any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)." An audience can consist of just one person (e.g. where the entertainment takes place in private booths). (2.2)
- 6.4 While local authorities should judge each case on its merits, we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows (2.3)

- 6.5 The relevant entertainment must be provided for the financial gain of the 'organiser' or 'entertainer'. The 'organiser' means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises. (2.8)
- 6.6 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

Refusal of 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. (3.27) (Emphasis added)
- 6.7 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) 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. (3.28) (Emphasis added)
- 6.8 *A decision to refuse a licence must be relevant to one or more of the above grounds.* (3.29)
- 6.9 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. (3.30)

- 6.10 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 on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.* (3.31) (Emphasis added)

Licence Conditions

- 6.11 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. (3.39)
- 6.12 Schedule 3 to the 1982 Act constitutes an authorisation scheme under Article 9 of the EU Services Directive 2006/123/EC (“the Directive”) which was implemented in the UK by the Provision of Services Regulations 2009 (“2009 Regulations”), which came into force on 28th December 2009. Local authorities must ensure they comply with the Regulations when applying the licensing provisions in Schedule 3. (3.53)

7. Probity in Licensing

- 7.1 Cheltenham Borough Council’s Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 7.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 7.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
- Be made on the individual merits of a case.
 - Have regard to all relevant national and local guidance.
 - Be made impartially and in good faith.
 - Be made by the body that receives all the relevant information and evidence.
 - Relate to the issue or question placed before the committee.
 - Be based only on consideration of relevant and material matters.
 - Be rational and reasoned.
 - Be made in a way that does not give rise to public suspicion or mistrust.
- 7.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.
- 7.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 7.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.

7.7 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

8. Officer Comments

8.1 The Council has not adopted a policy of setting a limit on the number of SEVs it considers relevant for a particular ward. Instead, each application will be determined on individual merits.

8.2 An application can be refused where Members feel that the grant of such a licence will 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 lay out, character or condition of the premises in respect of which the application is made.

8.3 In determining the appropriateness of such premises, Members can taken into account factors such as the proximity of residential properties, schools, places of worship and family shopping areas.

8.4 A number of issues has been raised by objectors that require clarification:

8.4.1 **Application not advertised properly** – The 1982 Act (as amended) prescribes how an applicant must advertise an application for a SEV. The regulations prescribe that an applicant must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.

In addition, where the application relates to premises, a notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 day beginning with the date the applications was made.

Officers were not initially satisfied that the public notices were displayed in such a way that they could be conveniently read by members of the public. As a consequence, officers requested that the consultation period be extended to mitigate any prejudice caused.

As a result, officers are satisfied that the application has been advertised in accordance with the statutory requirements.

8.4.2 **The Gender Equality Duty 2007** – Members are to note the Gender Equality Duty regulations are not relevant because 1) Parliament has made it lawful to operate SEVs and 2) the Council is responsible for licensing the activity not directing who must perform it.

8.4.3 **Licensing objectives** – A number of objectors have objected to this application using the form normally used to make representations in relation to alcohol/entertainment licensing applications. Members are to note that the promotion of the licensing objectives are not relevant to this application and as a consequence comments made using these forms can only be considered relevant in so far as they relate to the grounds for refusal set out in paragraphs 5.3 & 5.4 of this report.

8.4.4 **Increased cost/need for policing** – Members are to note that this objection is not relevant because it does not relate to the grounds for refusal set out in paragraphs 5.3 & 5.4 of this report. In addition, there has been no objection from Gloucestershire Constabulary to support this assumption.

8.4.5 **Recent court case** – Since this application must be determined on individual merits, the reported court case should not be taken into account as relevant.

8.4.6 **Moral objections** - The Council does not take any moral stand in adopting this policy. The Council recognises that Parliament has made it lawful to operate Sexual Entertainment Venues, and that such businesses are a legitimate part of the retail and leisure industries. It is this Council's role as the Licensing Authority to administer the licensing regime in accordance with the law.

Objections should not be made on moral grounds or values and Members should not consider objections that are not relevant to grounds other than those set out in paragraphs 5.3 & 5.4 of this report.

8.5 Members must decide what weight to add to comments made based on the evidence presented to the Committee that relates to the issues raised.

8.6 Having regard to the Council's adopted policy and the comments made by the Chief Officer of the Police and interested parties, the Committee can decide to:

- i) Grant the application as applied for;
- ii) Grant the application subject to any additional terms, conditions and/or restrictions that are either specific to the licence or standard conditions;
- iii) Refuse the application.

Background Papers

1. Sexual Entertainment Venues: Guidance for England and Wales. (March 2010)
2. Cheltenham Borough Council's Sexual Entertainment Venue Policy Statement.
3. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

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